

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 22-cv-23958

DANIEL HERNANDEZ, individually and on
behalf of all others similar situated,

Plaintiff,

vs.

MIAMI AUTOMOTIVE RETAIL, INC., d/b/a
BRICKELL MAZDA,

Defendant.

_____ /

NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 USC §§ 1331, 1367, 1441, 1446, and 1453, Defendant, Miami Automotive Retail, Inc. d/b/a Brickell Mazda (“Brickell Mazda”), files this notice of removal of this action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida, Miami Division, and states:

1. Removed case. This is a purported class-action in which Plaintiff alleges he received two text messages from Brickell Mazda in violation of federal and Florida law, entitling him and the proposed class to statutory damages. The initial complaint was filed on December 3, 2021 and deemed served on February 22, 2022, but it was not removable at that time. That initial complaint only alleged a violation of Florida law—specifically, Florida statute section 501.059 known as the Florida Telephone Solicitation Act (“FTSA”)—and did not otherwise fall within this Court’s diversity jurisdiction.

This action first became removable when Plaintiff filed his First Amended Class Action Complaint (“Amended Complaint”) on November 16, 2022 (and again on November 28, 2022

pursuant to an order providing leave to amend). The Amended Complaint, among other things, added claims for relief under the federal Telephone Consumer Protection Act (“TCPA”) which is within this Court’s original federal-question jurisdiction.

2. Jurisdiction. This Court has original jurisdiction over Plaintiff’s TCPA claims pursuant to 28 USC § 1331 because they arise under federal law. This Court has supplemental jurisdiction pursuant to 28 USC § 1367 over Plaintiff’s FTSA claim—which is premised upon the alleged sending of the same two text messages—because both claims arise from a “common nucleus of operative fact,” *Boyette v. Adams*, 22-10288, 2022 WL 7296567, at *8 (11th Cir. Oct. 13, 2022), such “that they form part of the same case or controversy,” 28 U.S.C. § 1367(a). *See also Williams v. Nationwide Credit, Inc.*, 890 F. Supp. 2d 1319, 1320 (S.D. Fla. 2012) (involving phone calls that were alleged to violate both the TCPA and Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), the court asserted supplemental jurisdiction over the FDUTPA claim).

3. Timeliness of removal notice. This Notice of Removal is timely filed pursuant to 28 USC § 1446(b)(3) because it is within 30-days of Brickell Mazda’s receipt “of a copy of an amended pleading. . . from which it may first be ascertained that the case is one which is or has become removable.”

4. Attachment of State Court documents. True and correct copies of all process, pleadings, and orders filed in the state court action are attached hereto pursuant to 28 USC § 1446(a).

5. Notice Given to the State Court. Pursuant to 28 USC § 1446(d), written notice of the removal of this action has been given to Plaintiff and to the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

WHEREFORE, this civil action is hereby removed to the United States District Court for the Southern District of Florida.

Respectfully submitted,

/s/ Jordan S. Kosches
Jordan S. Kosches, Esq.
Florida Bar No.: 49881
jordan.kosches@gray-robinson.com
Jack R. Reiter, Esq.
Florida Bar No.: 0028304
jack.reiter@gray-robinson.com
GrayRobinson, P.A.
333 SE Second Avenue, Suite 3200
Miami, Florida 33131
Telephone: (305) 416-6880
Facsimile: (305) 416-6887

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Removal has been filed and served electronically through this Court's CM/ECF system as well as via e-mail this 5th day December 2022 upon:

Scott Edelsberg, Esq.
Edelsberg Law, P.A.
20900 NE 30th Avenue, Suite 417
Aventura, Florida 33180
Telephone: (305) 975-3320
scott@edelsberglaw.com

Manuel Hiraldo, Esq.
Hiraldo P.A.
401 E. Las Olas Boulevard, Suite 1400
Ft. Lauderdale, Florida 33301
Telephone: (954) 400-4713
mhiraldo@hiral dolaw.com

Andrew J. Shamis, Esq.
Garrett O. Berg, Esq.
Shamis & Gentile, P.A.
14 NE 1st Avenue, Suite 705
Miami, Florida 33132
Telephone: (305) 479-2299
ashamis@shamisgentile.com
gberg@shamisgentile.com

/s/ Jordan S. Kosches